

**REMARKS**

In the Office Action, the Examiner rejected claims 1-22, however, the Examiner failed to cite any prior art against dependent claims 7 and 22. In the previous Office Action mailed on August 9, 2007, the Examiner indicated allowable subject matter in claims 7 and 22, while objecting to claims 7 and 22 based upon their dependence from rejected claims 1 and 19, respectively. For the purposes of this response, Applicants will treat claims 7 and 22 as objected to and containing allowable subject matter. Consequently, Applicants will address only the rejections of claims 1-6 and 8-21. However, if the Examiner intended to reject claims 7 and 22, Applicants respectfully request that this rejection to be made in a new Non-Final Office Action in response to this paper, so that Applicants have an opportunity to address any newly made rejections.

By this response, Applicants amend claims 1, 8, 13, and 19. Support for these amendments may be found at least by viewing FIG. 2, with specific attention to reference numerals 16, 68, and 78, as well as page 7, line 24 – page 8, line 14, and page 11, lines 5-17 of the originally filed specification. Upon entry of these amendments, claims 1-22 will remain pending in the present application and are believed to be in condition for allowance. In view of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

**Claim Rejections under 35 U.S.C. § 103(a)**

In the Office Action, the Examiner rejected claims 1, 6, 13, and 17-20 under 35 U.S.C. § 103(a) as unpatentable over Mantha et al., U.S. Publication No. 2004/0023622 (hereinafter “the Mantha reference”), in view of Lachtar et al., U.S. Publication No.

2003/0125039 (hereinafter “the Lachtar reference”). The Examiner further rejected claims 8 and 10 under 35 U.S.C. § 103(a) as being unpatentable over the Mantha reference in view of the Lachtar reference and further in view of Kang, U.S. Publication No. 2001/0016503 (hereinafter “the Kang reference”).

Applicants respectfully traverse this rejection. The burden of establishing a *prima facie* case of obviousness falls on the Examiner. *Ex parte Wolters and Kuypers*, 214 U.S.P.Q. 735 (B.P.A.I. 1979). To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 180 U.S.P.Q. 580 (C.C.P.A. 1974). However, it is not enough to show that all the elements exist in the prior art since a claimed invention composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). It is important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does. *Id.* Specifically, there must be some articulated reasoning with a rational underpinning to support a conclusion of obviousness; a conclusory statement will not suffice. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). Indeed, the factual inquiry determining whether to combine references must be thorough and searching, and it must be based on *objective evidence of record*. *In re Lee*, 61 U.S.P.Q.2d 1430, 1436 (Fed. Cir. 2002).

***Omitted Features of Independent claims 1, 13, and 19***

Independent claim 1 recites, *inter alia*, “a scheduler configured to receive an indication to allocate the un-utilized transmission power from the first wireless service of the

first industry standard wireless system to a second wireless service of a second industry standard wireless system and utilize the indication *to allocate the un-utilized transmission power for the second wireless service* and wherein the first industry standard wireless system and the second industry standard wireless system are *distinct* industry standard wireless systems.” (Emphasis added). Similarly, independent claim 13 recites, *inter alia*, “*allocating transmission power* to the second industry standard wireless system from the first industry standard wireless system for at least one communication channel based on an indication of transmission power that is un-utilized by the first industry standard wireless system and wherein the first industry standard wireless system and the second industry standard wireless system are *distinct* industry standard wireless systems.” (Emphasis added). Likewise, independent claim 19 recites, *inter alia*, “providing an indication to *allocate non-utilized transmission power* from the first industry standard wireless system to the second industry standard wireless system to a scheduler and wherein the first industry standard wireless system and the second industry standard wireless system are *distinct* industry standard wireless systems.” (Emphasis added).

The Examiner admits that the Mantha reference fails to teach power sharing between *a first and a second industry standard wireless system*. See Office Action, page 3. Indeed, the Mantha reference, at best, teaches power sharing between *two services* (voice and data) signals of *a single wireless system*. See Mantha, FIG. 5; paragraph 11, lines 1-2, paragraph 48, lines 1-6, and paragraph 88, lines 15-18. To remedy this deficiency, the Examiner has relied on the Lachtar reference to teach a first and a second industry wireless standard wireless system. See Office Action, page 3. However, the Lachtar reference, at best, teaches utilizing a *single industry wireless standard wireless system* with multiple base station

controllers (BSC 104 and BSC 106) and base station transceiver systems (BTS 108a&b and BTS 112a&b). *See* Lachtar, FIG. 1; paragraph 20, lines 4-7. Since BSC 104 and BSC 106 operate using the *same* industry wireless standard wireless system, it cannot be argued that BSC 104 and BSC 106 operate utilizing *distinct* industry wireless standard wireless systems. As such, the Lachtar reference cannot teach power sharing between a first and a second industry standard wireless system where the first and second industry standard wireless systems are *distinct* industry standard wireless systems, as recited in claims 1, 13, and 19. As such, neither the Mantha reference, nor the Lachtar reference, taken alone or in hypothetical combination, teach or show power sharing between a first and a second industry standard wireless system, wherein the systems are *distinct*.

Moreover, the Examiner has construed BSC 104 and BTS 108a&b as a first industry standard wireless system and BSC 106 and BTS 112a&b as a second industry standard wireless system. *See* Office Action, page 3. However, there is no teaching in the Lachtar reference of either *allocating transmission power* or providing an indication to *allocate non-utilized transmission power* from the first industry standard wireless system to the second industry standard wireless system, as recited in independent claims 1, 13, and 19. Indeed, BSC 104 and BTS 108a&b are a geographically separate system from BSC 106 and BTS 112a&b, and no power is allocated between the two systems. Indeed, Applicants assert that each has its own power supply and allocation of power between the two systems would, at least, be impractical. As such, there is no teaching in the Lachtar reference that suggests allocating or sharing of power of between the distinct systems, as recited in independent claims 1, 13, and 19. Accordingly, for this additional reason, neither the Mantha reference, nor the Lachtar reference, taken alone or in hypothetical combination, teach or show either

*allocating transmission power* or providing an indication to *allocate non-utilized transmission power* from the first industry standard wireless system to the second industry standard wireless system, as recited in independent claims 1, 13, and 19.

The Mantha and Lachtar references, taken alone or in hypothetical combination fail to teach or show all of the features of independent claims 1, 13, and 19. Applicants, therefore, assert that independent claims 1, 13, and 19, as well as all claims depending therefrom, are allowable. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claims 1, 13, and 19, and further request allowance of independent claims 1, 13, 19, as well as all claims depending therefrom.

***Claims 2-5, 14-16, and 21***

The Examiner has applied the Jeon et al., U.S. Publication No. 2004/0253928 (hereinafter “the Jeon reference”) in combination with the Mantha and Lachtar references to reject dependent claims 2-5, 14-16, and 21. Applicants respectfully assert that claims 2-5, 14-16, and 21 are allowable based on their dependency from allowable independent claims 1, 13, and 19. As discussed above with respect to the independent claims, the Mantha reference and the Lachtar reference, taken alone or in hypothetical combination, fail to teach or show all of the features of independent claims 1, 13, and 19. The Jeon reference fails to obviate the deficiencies of the Mantha reference and the Lachtar reference. Similar to the Mantha reference, the Jeon reference is directed to power allocation between a real-time service, such as voice or video, and a non-real-time service, such as a packet service of a single system. See Jeon, paragraphs 5-7 and 28. The Jeon reference, however, does not teach or show power sharing between a first and a second industry standard wireless system, wherein the

systems are *distinct*, as recited in independent claims 1, 13, and 19. The Jeon reference also does not teach of show either *allocating transmission power* or providing an indication to *allocate non-utilized transmission power* from the first industry standard wireless system to the second industry standard wireless system, as recited in independent claims 1, 13, and 19. As such, the Jeon reference fails to obviate the deficiencies of the Mantha reference and the Lachtar reference. Accordingly, Applicants respectfully request withdrawal of the Section 103 rejection and allowance of claims 2-5, 14-16, and 21.

***Omitted Features of claim 8***

Amended claim 8 recites, *inter alia*, “a scheduler configured to receive an indication to allocate un-utilized transmission power to the second baseband system from the first baseband system and to utilize the indication to *allocate un-utilized transmission power* for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are *distinct* baseband systems.” (Emphasis added).

The Examiner has rejected independent claim 8 under similar reasoning to that applied to independent claims 1, 13, and 19. Accordingly, arguments analogous to those presented above with respect to the Mantha and Lachtar references can be applied to the prior art failing to teach allocating *un-utilized transmission power* between a first and a second baseband system where the baseband systems are *distinct*. The Kang reference, also applied in the rejection of claim 8, fails to cure the deficiency of the Mantha reference and the Lachtar reference in teaching allocating *un-utilized transmission power* between a first and a second baseband system where the baseband systems are *distinct* baseband systems. Indeed, the Kang reference is relied upon merely as teaching a channel card configured to

communicate with a plurality of wireless units. *See* Office Action, page 8. Applicants submit that the Kang reference is directed to transmission and reception of signals via a channel card (*see* Kang, Abstract) and is not directed to allocating *un-utilized transmission power* between a first and a second baseband system where the baseband systems are *distinct* baseband systems.

Accordingly, the Mantha, Lachtar, and Kang references, taken alone or in hypothetical combination fail to teach or show all of the features of independent claim 8. Applicants, therefore, assert that independent claim 8, as well as all claims depending therefrom, are allowable. Accordingly, Applicants respectfully request withdrawal of the rejection of independent claim 8, and further request allowance of independent claim 8, and all claims depending therefrom.

***Claim 9***

The Examiner has applied Hongo et al., U.S. Publication No. 2003/0022639 (hereinafter “the Hongo reference”) in combination with the Mantha and Lachtar references to reject dependent claim 9. Applicants respectfully assert that claim 9 is allowable based on its dependency from claim 8. As discussed above, the Mantha, Lachtar, and Kang references, taken alone or in hypothetical combination, fail to disclose the allocation of *un-utilized transmission power* for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are *distinct* baseband systems. The Hongo reference fails to obviate the deficiencies of the Mantha, Lachtar, and Kang references with respect to independent claim 8. Specifically, the Hongo reference is directed to a peak limiter. *See* Hongo, paragraph 1. The Hongo reference, however, does not disclose

allocation of *un-utilized transmission power* for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are *distinct* baseband systems as set forth in claim 8. As such, the Hongo reference fails to obviate the deficiencies of the Mantha, Lachtar, and Kang references. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of claim 9.

***Claims 11-12***

Applicants respectfully assert that claims 11-12 are allowable based on their dependency from claim 8. As discussed above, the Mantha, Lachtar, and Kang references, taken alone or in hypothetical combination, fail to disclose the allocation of *un-utilized transmission power* for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are *distinct* baseband systems. The Jeon reference fails to obviate the deficiencies of the Mantha, Lachtar, and Kang references with respect to independent claim 8. Specifically, the Jeon reference is directed to power allocation between a real-time service, such as voice or video, and a non-real-time service, such as a packet service of a single system. *See* Jeon, paragraphs 5-7 and 28. The Jeon reference, however, does not disclose allocation of *un-utilized transmission power* for the second plurality of communication channels and wherein the first baseband system and the second baseband systems are *distinct* baseband systems as set forth in claim 8. Accordingly, the Jeon reference fails to obviate the deficiencies of the Mantha, Lachtar, and Kang references. Accordingly, Applicants respectfully request withdrawal of the rejection and allowance of claims 11-12.

**Conclusion**

In view of the remarks and amendments set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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